

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1380 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DINESHKUMAR GIRDHARBHAI PATEL

Versus

COLLECTOR & DIST.MAGISTRATE

Appearance:

MR MANOJ POPAT for MR RA MISHRA for Petitioner
MS MANISHA LAVKUMAR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/06/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the parties.
2. The petitioner filed this petition and prayed
therein to direct respondents authority to allow the
petitioner to carry on his business of selling pan,

biddies, cigarettes, etc. in the cabin at GH-5 Circle, Sector-23 Corner, Behind Bus Stand, Gandhinagar without any intervention of any nature, whatsoever. By amendment to the petition, further prayer has been made for declaring the action of the respondent-authorities of removing and/or demolishing the cabin of the petitioner as illegal. Further, next prayer has been made to restrain the respondent authorities from removing or demolishing the cabin of the petitioner from the present place.

2. This petition was admitted on 2/3/1990 and by way of interim relief, the respondents were directed to maintain status quo as on that day.

3. The reply to the Special Civil Application is filed in this case, the copy of which has been given to the learned counsel for the petitioner on 13th April, 2000. The petitioner has not filed any rejoinder to the reply. So, the averments made in the reply stand uncontroverted.

4. It has clearly borne out from the reply that the petitioner put this cabin on the Government land without any allotment of the same from the Government authority. It is correctly contended by the respondents that an unemployed person has no right to make an encroachment on the roadside on the Government land. The Mamlatdar has found the petitioner to be an unauthorised occupant of the Government land. The learned counsel for the petitioner has failed to show any right of the petitioner on the land. The petitioner has no right on the land and how his possession can be protected by this Court under Article-226 of the Constitution which is unauthorised. In fact, the petitioner is a trespasser on the Government land and the same cannot be protected, howsoever long possession of the petitioner may be there. Until it is not regularised, it continues to be only as trespass and it cannot be protected. It is utmost essential for the petitioner, who seeks an extra indulgence of this Court under its extra ordinary equitable jurisdiction, to make out that he is a law abiding person. A person who himself violates law or takes law in his own hand cannot come up before this Court for his protection. Otherwise, what this court will do to perpetuate illegality. Unauthorised occupation of a person on the Government land i.e the trespass, cannot be protected by the Court. The petitioner, being a rank trespasser, his possession cannot be protected.

5. In the result, this Special Civil Application

fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. The petitioner is directed to pay Rs.20/- per day as use and occupation charges of the land in dispute to the respondents from the date of the filing of this Special Civil Application to the date on which he vacates the same. A copy of the writ of this order may be sent to the petitioner for compliance. In case within 15 days of the receipt of the writ of the order the petitioner does not remove his possession from the land in dispute, it is open to the respondent to take the possession thereof.

(S.K. Keshote, J.)

(kamlesh)